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**AGREEMENT BETWEEN**

**THE CITY OF NEW PHILADELPHIA, OHIO**

**AND**

**THE INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS,  
LOCAL # 1501**

**EFFECTIVE: 1/1/13 THRU 12/31/2015**

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**ARTICLE 1**  
**PREAMBLE**

This Agreement is entered into by and between the City of New Philadelphia, hereinafter referred to as the Employer, and the International Association of Firefighters Local # 1501, hereinafter referred to as the Union. It is the purpose of this Agreement to achieve and maintain harmonious relations between the Employer and the Union, to provide for equitable and peaceful adjustment of differences which may arise, and to establish proper standards of wages, hours, and other conditions of employment.

**ARTICLE 2**  
**RECOGNITION**

**Section 2.1.** The Employer recognizes the Union as the sole and exclusive bargaining agent for all full time Employees of the New Philadelphia Fire Department which includes the positions of Firefighters/ EMT, Firefighter/EMT-P, Firefighter/Fire Inspector, Lieutenant, Lieutenant/Fire Inspector, and Captain, Captain/Fire Inspector.

**Section 2.2.** It is clearly understood that the Chief of the Department, and ninety (90) day probationary Employees of the Fire Department are excluded from the Bargaining Unit.

**ARTICLE 3**  
**UNION SECURITY**

**Section 3.1.** Any Employee, both present and future, who is not a member of the Union, shall, as a condition of employment, pay a monthly service charge equivalent to the dues and assessments paid by a member of the Union. In the case of a new Employee, the assessment will not begin until after sixty (60) days from his starting date.

**Section 3.2.** The Union shall indemnify, defend, and save the Employer harmless against any and all claims, demands, suits, or other forms of liability that may arise out of or by reason of action taken by the Employer in the fulfilling the obligations imposed on the Employer under this article.

**Section 3.3.** In the case that an Employee practices a religion that is in opposition to the Union membership, said Employee shall be subject to the provisions as set forth in section 4117.09 (c) of the Ohio Revised Code.

**ARTICLE 4**  
**DUES CHECK-OFF**

The Employer agrees to deduct, from every other pay, dues and assessments in an amount certified to be current by the Secretary/Treasurer of the Local Union from the pay of those Employees who individually request in writing that such deductions be made. The total amount of the deductions shall be remitted to the Secretary/Treasurer of the Union on the same day as the pay is made to the Employees.

**ARTICLE 5**  
**DISCRIMINATION**

The Parties to this Agreement agree not to discriminate against any Employee because of race, color, religion, age, disability, ancestry, sex, national origin, or military service.

**ARTICLE 6**  
**UNION ACTIVITY AND UNION BUSINESS**

**Section 6.1.** There shall be no discrimination, interference, restraint, or coercion by the Employer against any Employee for his activity on behalf of, or membership in, the Union except as permitted by law and/or this Agreement.

**Section 6.2.** The Employer agrees to allow the Union to hold all meetings, regular, and special, in the Fire Station provided that the Fire Chief is notified at least forty eight (48) hours in advance of any meeting and the meeting will not interfere with normal duties and work of the Fire Department.

**Section 6.3.** Employees elected or appointed to represent the Union shall be granted time to perform their Union functions including, but not limited to, attendance at regular and special meetings, conventions, seminars, conferences, and activities related to grievance procedures without loss of pay.

**Section 6.4.** All members of the Union negotiating team shall be allowed time off for all meetings which shall be mutually set by the Employer and the Union.

**Section 6.5.** If due to Union activities the Employee must be absent from his regular turn of duty, he shall be required to notify the Chief, in writing, forty-eight (48) hours prior to such absence. Such request shall be granted unless minimum manning requirements will not be met due to the Employee's absence.

**Section 6.6.** The Employer shall provide ample space on a bulletin board for the use by the Union in the Fire Station at a convenient location accessible to Employees and shall provide space for a mailbox in the front entrance of the Fire Station.

**ARTICLE 7**  
**MANAGEMENT RIGHTS**

**Section 7.1.** The Employer's exclusive rights include, but shall not be limited to the following, except as expressly limited by the terms set forth in this Agreement:

- A. Determine matters of inherent managerial policy, including areas of discretion of policy which include but are not limited to areas of discretion or policy such as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, and organizational structure;
- B. Direct, supervise, evaluate, or hire Employees;

- C. Maintain and improve the efficiency and effectiveness of governmental operations;
- D. Determine the overall methods, process, means, or personnel, by which governmental operations are to be conducted;
- E. Suspend, discipline, demote, or discharge, for just cause, or layoff, transfer, assign, schedule, promote, or retain Employees;
- F. Determine the adequacy of the work force;
- G. Determine the overall mission of the of the employer as a unit of government;
- H. Effectively manage the work force, and
- I. Take actions to carry out the mission of the public employer as a governmental unit.

**Section 7.2.** The Employer specifically reserves all rights and privileges not specifically identified or impaired in any Article of this Agreement.

## **ARTICLE 8**

### **PRINTING AND SUPPLYING AGREEMENT**

This Agreement and any future Agreements shall be printed and six (6) copies supplied to the Union by the Employer within thirty (30) working days of ratification, at no cost to the Union.

## **ARTICLE 9**

### **DEFINITION OF SENIORITY**

**Section 9.1.** Seniority shall be determined by and defined as continuous service in the New Philadelphia Fire Department calculated from the date of employment.

**Section 9.2.** Continuous service shall be broken only by resignation, discharge, or retirement except as provided in the Ohio Revised Code which specifies that an Employee who resigns, when in good standing, may petition to be reinstated within one (1) year of the date of resignation. Should that Employee be reinstated within one (1) of the date of resignation, seniority will be continued from the original date of employment, minus the period of time away from service with the City of New Philadelphia.

**Section 9.3.** Employees with the same employment date shall be assigned to the seniority list in the order of their ranking on their Civil Service eligibility list.

## **ARTICLE 10**

### **EMPLOYEE STATUS**

**Section 10.1.** The Employer shall maintain and annually supply a current seniority list to the President of the Union. This list shall be used whenever called for by specific articles and sections of this Agreement in such cases, as may be agreed upon by the Employer and the Union.

**Section 10.2.** The Employer shall maintain descriptions of positions within the Bargaining Unit and forward copies within a reasonable period of time to the Union upon their request.

**ARTICLE 11**  
**LAYOFF AND RECALL**

The provisions of this Article represent the full and complete understanding and commitment between the Employer and the IAFF in all matters within the scope of Lay-off and Recall of bargaining unit employees. The terms and conditions set forth in this Article of the Collective Bargaining Agreement represent the full and complete understanding and commitment between the City of New Philadelphia (Employer) and the New Philadelphia Fire Fighters IAFF Local #1501 (Union). Moreover, the provisions of this agreement shall by virtue of the parties affixing hereto their signatures, shall supersede any section, in whole or in part, which conflicts with the provisions contained in Ohio Revised Code § 124.321 – 124.328, and 124.37.

**SENIORITY**

**Section 11.1. Definition.** For the purposes of this article only, “Seniority,” shall be defined as: The Employer agrees to establish and maintain a list which identifies the order of seniority of all bargaining unit members. Seniority shall be defined as the length of continuous service measured in years, months, and days that an Employee has accumulated as a full-time Employee in the service of the New Philadelphia Fire Department. In the event two or more employees have the same seniority following the application of the above listed process, the seniority ranking will be based upon the affected employee’s ranking on the entry level Civil Service test, with the employee scoring the highest being deemed the most senior.

**Section 11.2. Accrual.**

- A. An Employee’s seniority shall commence after the completion of the initial probationary period and shall be retroactive to the Employee’s date of hire.
- B. Seniority shall continue to accrue while the employee is in active pay status or during the any of the following events:
  - 1. While on approved sick leave, injury leave or FMLA;
  - 2. Military leave;
  - 3. Leave of absence without pay for up to twelve (12) months;
  - 4. A lay-off of less than thirty-six (36) months.

The procedures set forth above do not limit the Union’s right to grieve any violation of this article.

**Section 11.3. Loss of Seniority.**

- A. An Employee’s seniority shall be lost when he or she:
  - 1. Terminates voluntarily;

2. Is discharged for just cause;
3. Retirement (normal service, deferred or disability)
4. Exceeds an approved leave of absence; and/or
5. Fails to return to work within thirty (30) day's on a recall from layoff.

## LAY OFF

In the event that it becomes necessary for the appointing authority to reduce its work force within the New Philadelphia Fire Department, the Employer shall lay off employees or abolish any position(s) in accordance with the provisions of this Agreement. A layoff of Employees may be initiated as necessary, due to lack of funds, lack of work, or the abolishment of a position.

**Section 11.4. Definitions.** As used in this agreement, a "lack of funds" shall mean that the appointing authority has a current or projected deficiency of funding to maintain current, or to sustain projected levels of staffing and operations. A "lack of work" shall mean that the appointing authority has a current or projected decrease in workload that requires a reduction of current or projected staffing levels in its organization or structure. The determination of a lack of work shall indicate the current or projected decrease in workload and whether the current or projected staffing levels of the appointing authority will be.

**Section 11.5. Initiating a Lay-off.** In the event that it becomes necessary for the appointing authority to reduce its work force within the New Philadelphia Fire Department, the Employer shall lay off employees or abolish any position(s) in accordance with the following procedures:

- A. The Employer shall send notification to the Union indicating the need for the possible reduction of personnel. The parties shall meet within 72 hours with the intent to negotiate the effects of a potential lay-off, to in good faith consider alternative proposals or plans. Should the employer determine that need for a reduction in personnel still exist following the effects bargaining, the employer shall send notice to the effected employees giving a thirty (30) day notification of the impending lay-off.
- B. Fire Department employees will be laid off in the inverse order of their Seniority (i.e., least senior Employees being laid off first). Any lay-off shall proceed in the following order:
  1. Seasonal, temporary and casual employees;
  2. Part-time employees;
  3. Full-time employees.
  - 4.

**Section 11.6. Reduction in Rank.** In the event that employees are reduced in rank as a result of a lay off or the abolishment of a promoted position within the New Philadelphia Fire Department, there shall be the establishment of preferred promotional list for that rank.

- A. An employee who is reduced in rank in accordance with the provisions of this Article shall be placed upon a preferred promotional list which is certified by the appointing authority. This list shall contain the name(s), of the effected employee, rank or position held, date of original promotion, and the date of and reason for demotion.

- B. Such preferred list shall be utilized exclusively for filling a vacancy in any such position before certification is made from any other list, including a new promotional eligibility list. No other name shall be certified from any other list for any such position until such preferred promotional list is exhausted.

**Section 11.7. Severance Pay.** In the event a bargaining unit member is laid off, they may, solely at the employee's discretion, receive a partial, or full payment for all accrued leaves and benefits as provided for in this Agreement. Payment shall be made to the employee in the pay period immediately following the employees request. However, Payment shall be made, in full, no later than 1 year from the layoff date.

### RECALL

In the event of a layoff, the Employer shall maintain an active "recall list" for a period not to exceed thirty-six (36) months. Whenever a vacancy occurs in a position for which laid off Employees are qualified, such Employees shall be recalled in accordance with their seniority in the reverse order that they were laid off.

**Section 11.8. Initiating a Recall.** The recall of employees who are in a current lay-off status shall be in accordance with the following provisions;

- A. Notice of recall shall be sent to the employees by certified or registered mail with a copy supplied to the Union President and posted on the Bulletin Boards located in each station. The Employer shall be deemed to have fulfilled its notification obligations by mailing the recall notice by certified mail, return receipt requested, to the last known mailing address provided by the employee.
- B. In the event of a recall the Employer shall issue a notice of recall to the affected employee by registered mail, return receipt requested. The employee shall have fourteen (14) days from the date the notice of recall is received or twenty-one (21) days from the date the Employer mailed the notice if no return receipt is received, to contact the employer and return to duty. Failure to respond to the recall notice shall constitute a permanent waiver of the employee's recall rights. All employees are responsible for ensuring that their current address is on file with the Employer at all times, including periods of lay-off.
- C. No new employees shall be hired in the New Philadelphia Fire Department, other than strictly administrative positions who are not certified to provide fire suppression activities, emergency medical services or fire safety inspector duties until all full-time employees who are laid off have been given the opportunity to return to work.

### DISPUTE RESOLUTION

Disagreements arising from the application/misapplication or interpretation of this agreement shall be resolved utilizing the grievance procedures as outlined in this agreement.

**ARTICLE 12**  
**LABOR MANAGEMENT COMMITTEE**

**Section 12.1.** There shall be a labor-management committee consisting of three (3) Union representatives and three (3) Employer representatives. The committee shall meet on request of either party at least once each calendar quarter to discuss all matters of mutual concern. Such meetings may be canceled by mutual consent. The committee shall have the authority to make recommendations to the Union and the Employer.

**Section 12.2.** Any recommendations or lack of resolution of differences, resulting from the meetings of this committee may be subject to the mediation and/or arbitration process if mutually agreed to by the parties.

**ARTICLE 13**  
**RULES AND REGULATIONS**

**Section 13.1.** The Union agrees that its members shall comply with all City and Fire Department rules and regulations, including those related to work performance. The Employer agrees that Department rules and regulations which affect working conditions shall be subject to the grievance procedure.

**Section 13.2.** As necessary, the Fire Chief and/or Safety Director shall create, amend and institute Policies, Rules and Regulations per Article 7 Management Rights. Except in cases deemed an emergency the Executive Union officials shall be furnished a final draft of the revised Policy and/or Rules and Regulations at least seven (7) calendar days prior to the implementation. If the Union considers the Policy and/or Rule or Regulation to be unreasonable or in violation of this Agreement, they may pursue the matter through the grievance procedure.

**Section 13.3.** The Employer shall name three (3) representatives and the Union shall name three (3) representatives to sit as a committee to update the Fire Department Rules and Regulations. This will be accomplished through mutual consent during the term of this Agreement. The handbook shall be supplied to each Employee at no cost.

**Section 13.4.** The Union shall acknowledge that it is the function of the Employer to establish, enforce and amend from time to time rules and regulations to be supplied in printed form to the Employer's representatives, to the Union, and to each Employee.

**ARTICLE 14**  
**RESIDENCY REQUIREMENT**

**Section 14.1.** Employees must live within Tuscarawas County or any County that is contiguous to Tuscarawas County.

**ARTICLE 15**  
**PREVAILING RIGHTS**

All rights, privileges, and working conditions enjoyed by the Employees on December 31, 1999, which are not included in this Agreement, shall remain in full force, unchanged and unaffected in any manner, during the term of this Agreement unless changed by mutual consent.

**ARTICLE 16**  
**PROMOTIONS**

**Section 16.1.** Promotional examinations shall be conducted in strict accordance to the provisions set forth in Chapter 124 of the Ohio Revised Code (Civil Service Law) using the newest revision as enacted by the Ohio Legislature.

**Section 16.2.** This list of five (5) promotional exam books will be posted at all times, and will be used for the duration of this Agreement for promotional exams:

**Lieutenant**

1. Essentials of Firefighting—IFSTA, 5<sup>th</sup> Edition ISBN 9780135022344
2. Pride and Ownership—Rick Lasky ISBN – 10:1593700784

**Captain**

1. Pride and Ownership—Rick Lasky ISBN – 10:1593700784
2. Fire Officers Handbook of Tactics, 3<sup>rd</sup> Edition John Norman ISBN – 10:159370061X  
Fire Officer Principles & Practice, 2<sup>nd</sup> Edition – IAFC & NFPA ISBN – 10:1449601626

**Section 16.3.** The Parties agree that should any of the titles above go out of print and/or become unavailable, they will meet and confer to determine a substitute text.

**Section 16.4.** The Ohio Fire Chiefs' Association is the only testing agency for a valid promotional exam. The only exception to this Section 4 is the Fire Chief's promotional exam.

**Section 16.5.** All promotions shall serve a probationary period pursuant to Ohio Revised Code/Civil Service Law for a period of six (6) months.

**ARTICLE 17**  
**ON-THE-JOB INJURY LEAVE AND LIGHT DUTY ASSIGNMENT**

**Section 17.1.** Any Employee unable to work because of a job-related disabling condition shall be entitled to an injury leave of absence at his regular rate of pay for up to ninety (90) calendar days provided he is medically certified as being unable to work. If, after the expiration of the initial ninety (90) day injury leave period the employee remains medically certified as being unable to work the Chief may, in his discretion, grant up to an additional ninety (90) calendar day of injury leave but only in thirty (30) day increments. The Employee shall be required to provide medical certification of his inability to work for any injury leave or injury leave

extension. Any injury leave of absence will not be charged against the Employee's sick leave. Any approved injury shall cease if the employee collects lost wage benefits from Worker's Compensation or Pension Benefits during the period of injury leave.

**Section 17.2.** During such injury leave of absence, the Employer will maintain regular payments into medical and pensions plans to insure continued coverage for the Employee and any dependents.

**Section 17.3.** Seniority, vacations benefits, sick leave accumulation and pension credits shall continue to accrue for the time spent on such injury leave of absence.

**Section 17.4.** If the Workers Compensation is retroactive to the date of the injury, the Employee will reimburse the City of New Philadelphia the amount of the compensation award for the period of duplication.

**Section 17.5.** Any Employee who, as a result of a job related disabling condition, is unable to return to full duty may be assigned to "light duty" on the recommendation and limitations set forth by a certified physician however, the assignment and duration of "light duty" shall be at the discretion of the Chief.

**Section 17.6.** This situation will be for temporary assignments only.

**Section 17.7.** Any employee assigned to a light duty shall continue to receive all compensation and fringe benefits, including accumulation of seniority attached to his normally assigned position.

**Section 17.8.** No superior shall ask, order or demand that any person assigned to "light duty" perform any task or assignment other than those which the Fire Chief has set out.

**Section 17.9.** Any Employee assigned to "light duty" will not at any time be counted towards Minimum Manning.

**Section 17.10.** Employees suffering injuries or illness while on duty due to job related activities, shall be paid for all time lost from work on the date of the injury or illness while receiving medical treatment and examinations, at their regular rate of pay and on the date of the injury, Employee(s) shall, on the date of the injury or illness, be provided with the necessary transportation to and from the doctor's office, or emergency room at no cost to the Employee.

## **ARTICLE 18**

### **DISCIPLINARY PROCEDURE**

**Section 18.1.** Employees Covered By Procedure. This procedure shall apply to all non-probationary Bargaining Unit Employees.

**Section 18.2.** Just Cause. Discipline, including reprimands, shall be imposed only for just cause.

**Section 18.3. Suspension Pending Investigation.** An Employee may be placed on paid administrative leave at any time during the disciplinary procedure at the sole discretion of the Employer.

**Section 18.4. Notice of Predisciplinary Hearing.** Only where the Employer may seek as a penalty the imposition of a suspension without pay, demotion, reduction in rank and/or termination shall it be necessary to serve upon the employee a Notice of Predisciplinary Hearing. The Predisciplinary Hearing Notice shall be served on the Employee a minimum of ninety-six (96) hours prior to the scheduled predisciplinary hearing; if the employee desires representation and the representative is unable to attend the scheduled hearing the employee may request up to an additional ninety-six (96) hours to secure representation for the hearing. The Employer shall not unreasonably deny such request, however; there shall be no further extensions. Said notice contain written notice of the following:

- A. The date, time, and location of the Predisciplinary Hearing.
- B. The specific act(s) for which discipline is being considered including a reference to dates, times and places if possible.
- C. That the employee must elect to do one of the following:
  - 1. Appear at the Hearing and present an oral or written statement in his own defense;
  - 2. Have a representative appear at the Hearing and present an oral or written statement in defense of the employee;
  - 3. Elect to waive the Hearing by giving written notice to the Employer of his intent to waive the Hearing.

Failure of the employee to be present at the Hearing, or have someone present at the Hearing on his behalf shall be considered a waiver of his right to a Predisciplinary Hearing.

**Section 18.5. Rights During Disciplinary Actions.** Employees have the following rights when involved in discipline:

- A. **Representation.** An Employee shall be entitled to representation by a Union representative or an attorney, at the Employee's expense, at any time after the Employee receives the Notice of Pending Disciplinary Action. If the Employee chooses to secure representation by an attorney or declines Union representation, the Employee shall execute a "Waiver of Representative" form found at Appendix A of the Agreement and forward such form to the Union.
- B. **Recording Devices.** No recording device, stenographic or other record shall be used during questioning unless the Employee is advised in advance. If the questioning is recorded, the Employee may request a copy.

**Section 18.6. Notice of Disciplinary Action.** If the employee is to be disciplined the employee shall be notified in writing within thirty (30) days following the predisciplinary hearing absent extenuating circumstances. The Employee may file a grievance at Step 3 of the grievance procedure within seven (7) working days following the day the Employee receives the Notice of Disciplinary Action. Nothing contained herein shall prohibit the Employer and the Employee from mutually agreeing to informally meet to attempt to resolve the issue during the seven (7) day period described herein.

**Section 18.7. Resignation.** An Employee may resign at any time following the receipt of the Notice of Pending Disciplinary Action provided in Section 22.4. Any such resignation will be processed in accordance with the Employer's Rules and Regulations, and the Employee's employment shall be terminated.

**Section 18.8. Failure to Appeal.** Failure to file a Step 3 grievance within the above time limit shall be construed as an agreement to the disciplinary action by the affected Employee and the Union. All subsequent appeal rights shall be deemed waived.

**Section 18.9. Settlement.** A disciplinary matter may be settled at any time. The terms of the settlement shall be construed as an agreement to the disciplinary action by the affected Employee and the Union. All subsequent appeal rights shall be deemed waived.

**Section 18.10. Civilian Complaints.** Any civilian complaint of a non-criminal nature which is made about an Employee, either orally or in writing, shall be handled by the Fire Chief, or his designee within thirty (30) days of such complaint. Failure of the Fire Chief or his designee to initiate an investigation within thirty (30) days of receiving the complaint will cause the complaint to be null and void absent extenuating circumstances. If the complaint against the Employee is unfounded, or if he is found innocent at a formal or informal hearing, nothing will be placed into the Employee's personnel file. Anything pertaining to the complaint that is already in the Employee's file shall be removed and not referred to.

**Section 18.11. Records of Discipline.** Records of disciplinary action shall cease to have force and effect to be considered in future discipline matters according to the following schedule unless there is intervening discipline of a similar nature:

Documented Oral Reprimands	Nine (9) Months
Written Reprimand	Twelve (12) Months
Suspension	Twenty-Four (24) Months

**Section 18.12.** Employees will have the option to attach a rebuttal statement to any complaints or disciplinary action(s) that are entered into their personnel file. Said rebuttal statement shall be attached within thirty (30) days of the Employee's notification.

**ARTICLE 19**  
**GRIEVANCE PROCEDURE**

**Section 19.1. Definitions.**

Grievance: The term "grievance" shall mean an allegation by a Bargaining Unit employee that there has been a breach, misinterpretation, or improper application of the express provisions of this Agreement.

The Bargaining Unit members agree that disputes processed through the grievance procedure shall be prohibited from further appeal to the Civil Service Commission.

Aggrieved Party: Any Employee or group of Employees within the Bargaining Unit filing the grievance.

Working Days: Shall be considered to be Monday thru Friday with Saturdays, Sundays and Holidays, as identified in this Agreement, excluded.

**Section 19.2.** Grievances which arise shall be settled in the following manner:

Step I      The Employee may, in the presence of a representative of the Union, submit a grievance in writing to the Fire Chief within ten (10) working days of the occurrence giving rise to the Grievance or within ten (10) working days of the time the grievant should have reasonably known of the occurrence giving rise to the grievance. The Fire Chief shall render a written decision within ten (10) working days after receiving the grievance.

Step II      If the grievance is not settled in Step I, the grievance may be submitted within ten (10) working days of the issuance of the written decision of the Fire Chief, to the Safety Director who shall render a written decision within ten (10) working days after receiving the grievance.

Step III     If the grievance is not settled in Step II, the grievance may be submitted to the Mayor of the City of New Philadelphia or his designee within ten (10) working days of the issuance of the written decision of the Safety Director. If the party submitting the grievance wants a meeting with the Mayor such request shall be submitted in writing with the grievance. The mayor, or his designee, who shall conduct a hearing, if one is requested, with all Parties involved, including the Union and/or legal counsel, within ten (10) working days of receiving the grievance. The Mayor or his designee shall render a written decision and supply copies of the decision to the aggrieved party and the Union within ten (10) working days from the date the meeting was held, or if no meeting is held, within ten (10) working days from the date he received the grievance.

Step IV - In the event a grievance is unresolved after being processed through all of the steps of the Grievance Procedure, then within thirty (30) calendar days of the rendering of the decision at Step III, the Union may submit the grievance to arbitration. The parties may mutually agree upon an arbitrator or request an arbitration panel of nine (9) from the FMCS, who must be Ohio

arbitrators certified by the National Academy of Arbitrators and within one hundred twenty-five (125) miles of the City. Within ten (10) calendar days of the receipt of such panel, the Parties shall alternatively strike to determine the arbitrator; however, each party has the one-time right (per arbitration) to reject an entire panel as unacceptable and request the issuance of another panel at the expense of the rejecting party. The arbitrator selected will then be contacted in order to schedule a hearing within thirty (30) days.

The arbitrator shall limit his or her decision(s) strictly to the interpretation, application, or enforcement of specific articles and/or sections of this Agreement. The arbitrator shall not have the authority to add to, subtract from, modify, change, or alter any provision of this Agreement, nor add to, subtract from, or modify the language therein in arriving at his determination on any issue presented that is proper within the limitations expressed herein. The arbitrator shall expressly confine himself to the precise issues submitted for arbitration and shall have no authority to determine any other issues not so submitted to him, or to submit observation or declarations of opinion which are not directly essential in reaching a decision on the issue in question. The arbitrator shall be without authority to recommend any right or relief on an alleged grievance occurring at any time other than the contract period in which such right originated, or to make any award based on rights arising under any previous agreement, grievance, or practices. The arbitrator shall not establish any new or different wage rates not negotiated as part of this Agreement. Absent written consent by the parties to the contrary, the arbitrator may hear only one (1) grievance at a time.

The fees and expenses of the arbitrator and the cost of the hearing room, if any, shall be split equally between the parties. All other expenses shall be borne by the Party incurring them. Neither Party shall be responsible for any of the expenses incurred by the other Party.

The arbitrator's decision and award will be in writing and delivered within thirty (30) days from the date the record is closed. The decision of the arbitrator shall be final and binding upon the Parties.

The Union agrees to indemnify and hold the Employer harmless against any and all claims, demands, suits or other forms of liability that may arise out of any determination that the Union failed to fairly represent a member of the Bargaining Unit during the exercise of his rights as provided by the Grievance and Arbitration Procedures herein contained.

## **ARTICLE 20**

### **SALARIES**

Section 1 - Effective January 1, 2007 the wage rates below for all Steps and all Classifications shall be rebased to include the Firefighter/Advanced EMT payment, the Firefighter/Paramedic payment and the HAZMAT Technician payment formally paid under Article 15 Technological Change and the Shift Differential payment under Article 61. All non-probationary Bargaining Unit Members shall attain and maintain Paramedic and HAZMAT Certification (excluding the three (3) EMT employees "Grandfathered" under previous Agreements)

Effective 1/1/2013 there shall be a 2.75% General Wage Increase (GWI) across

the board for all classifications and all steps within those classifications.

Effective 1/1/2014, a 2.5% across the board increase for all classifications and all steps within those classifications.

Effective 1/1/2015, a 2.25% across the board increase for all classifications and all steps within those classifications.

		2013 2.75% GWI	2014 2.5% GWI	2015 2.25% GWI
Captain		\$18.79	\$19.26	\$19.69
Captain /Fire Inspector		\$20.30	\$20.81	\$21.28
Lieutenant		\$18.44	\$18.90	\$19.33
Lieutenant/Fire Inspector		\$19.91	\$20.41	\$20.87

		2013 2.75% GWI	2014 2.5% GWI	2015 2.25% GWI
FF 1st 90 Days		\$14.55	\$14.91	\$15.25
FF 90 Days to 1 year		\$15.68	\$16.07	\$16.43
Step 1 FF		\$16.42	\$16.83	\$17.21
Step 2 FF		\$16.63	\$17.05	\$17.43
Step 3 FF		\$16.91	\$17.33	\$17.72
Step 4 FF		\$17.17	\$17.60	\$18.00
Step 5 FF		\$17.40	\$17.84	\$18.24
FF/Inspector 1 <sup>st</sup> 90 Days		\$15.72	\$16.11	\$16.47
FF/Insp. 90 Days to 1 yr		\$16.94	\$17.36	\$17.75
Step 1 FF/Inspector		\$17.72	\$18.16	\$18.57
Step 2 FF/Inspector		\$17.95	\$18.40	\$18.81
Step 3 FF/Inspector		\$18.26	\$18.72	\$19.14
Step 4 FF/Inspector		\$18.55	\$19.01	\$19.44
Step5 FF/Inspector		\$18.79	\$19.26	\$19.69

Step scale by years of seniority completed

<u>Year</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
2013-2015	1+ to 2	2+ to 4	4+ to 8	8+ to 15	15+

Section 2 – Captains shall obtain State Fire Code Inspection Certification by March 1, 2008 in compliance with their revised (2/15/07) job description

Section 3- Inspector compensation shall be granted to not more than seven (7) bargaining unit members based on rank then seniority.

Section 4 - The City of New Philadelphia and the IAFF acknowledge that the wage rates above reflect the substitution of a past 4.5% additional payment to the Police and Fire Pension Fund via the fringe benefit method with a 3.63% across the board increase in pay.

Section 5 - The Squad Coordinator position and the Vehicle Maintenance Coordinator positions will receive a \$.950 per hour for 2013, \$.98 per hour in 2014, and \$1.01 per hour in 2015. Increase rates consistent with above percentages. These positions shall be retested whenever vacancies occur. The Fire Chief shall be the testing agent.

Section 6 - The job classification of Dive Rescue will have \$.20 per hour added to the appropriate Firefighter's base wage when the following certifications are met:

- Obtain and Maintain Public Safety Diver Certification
- Obtain Dry-Suit Certification
- Certify in Public Safety Diver Course every 6 years

**ARTICLE 21**  
**HOURS**

**Section 21.1.** Fire suppression I EMT personnel shall work a three (3) platoon, twenty-four (24) hour shift. The twenty-four (24) hour shift shall commence at 0800 and continue through 0800 hours the following day. Personnel shall work a fifty-six (56) hour average week based upon a cycle of two hundred twenty-four (224) hours in a twenty-eight (28) day cycle.

**Section 21.2.** The average fifty-six (56) hour week shall be interpreted as a sequence being set as Twenty- four (24) hours on duty followed by forty-eight (48) hour rest period.

**ARTICLE 22**  
**DEFINITION OF PAY RATES**

A Firefighters hourly rate of pay will equal the annual salary divided by two thousand nine hundred twelve (2912) hours. This rate shall hereinafter be referred to as the "base fifty-six (56) hour rate of pay."

**ARTICLE 23**  
**SHIFT EXCHANGE**

**Section 23.1.** Employees shall have the right to exchange whole or partial shifts when the change does not interfere with the operation of the Fire Department.

**Section 23.2.** The Employee shall notify his immediate Supervisor prior to exchanging a full or partial shift.

**Section 23.3.** The exchange of shifts shall not result in any extra pay for either of the involved Parties.

**ARTICLE 24**  
**DURATION AND POSTING OF SCHEDULES**

**Section 24.1.** The Fire Chief shall set up a master shift schedule and have it posted in a convenient location in the Fire Station accessible to Employees (such as a bulletin board) and copies will be forwarded to the Union Secretary and the Safety Director.

**Section 24.2.** No Employee will normally be required to change shifts without written notice at least thirty (30) days prior to the scheduled change. A copy of this change will be supplied to the Union Secretary and the Safety Director.

**Section 24.3.** If in the case of emergency (death, injury, long-term illness, etc.), it becomes necessary to change an Employee's shift in order to fill a crew to minimum manning requirements; a verbal notification will be acceptable.

**Section 24.4.** An Employee cannot be changed to a different crew within forty-eight (48) hours of his last shift without receiving overtime pay for the hours worked.

**Section 24.5.** This condition shall not last more than thirty (30) days unless the requirements of section "2" of this article are met, or if the Employee involved releases the Employer from fulfilling the requirements of Section 2.

**ARTICLE 25**  
**OVERTIME**

**Section 25.1.** In the event that a need for overtime occurs in the Fire Department, overtime shall accrue to members of the Bargaining Unit, and shall be voluntary. The Employee shall be paid at the rate of 2.1 times his base fifty-six (56) hour rate, for at least (1) hour for each occurrence, for all time worked in excess of his regularly scheduled hours of work. All opportunities for overtime shall be distributed and rotated equally among the Employees. The Employer agrees to maintain a log to show the time of the call and the response from each person called as to whether it is accepted, refused, no answer, sick, vacation, or on duty.

**Section 25.2.** In the event that a need for overtime occurs on a day recognized as a national, state, or local holiday and as set forth in Article 35, then the Employee shall be entitled to a

minimum of two (2) hours at 2.1 times his base fifty-six (56) hour rate of pay, for each occurrence. Each Employee may have choice of pay or compensatory time for each overtime hour without limitations.

An employee actually working overtime may elect to accrue compensatory time in lieu of receiving overtime pay at the rate of one and one-half (1.5) hours for each hour of overtime actually worked. Each employee may accrue up to a maximum of three hundred (300) hours and any time in excess shall be paid as overtime. An employee wanting to use accrued compensatory time shall submit a written request to the Employer for approval at least four (4) calendar days in advance of the date of its intended use. The Employer agrees that any written request timely submitted shall not be denied on the sole basis that it cause overtime. Any request for the use of compensatory time submitted with less than four (4) calendar days' notice may be granted in the sole discretion of the Employer.

## **ARTICLE 26** **CALL BACK PAY**

**Section 26.1.** Any Employee who is required to work after leaving his regular shift shall be paid 2.1 times his base fifty-six (56) hour rate for at least one (1) hour or for all hours worked. The recall of Employees shall be voluntary. Any Employee who is called back to work to fill “in the station” minimum manning requirements after leaving his regular shift shall be paid for two (2) hours for the first hour worked and one (1) hour for each additional hour worked beyond the first hour (i.e., work one [1] hour receive pay for two [2] hours; work three [3] hours and receive pay for four [4] hours) at 2.1 times his base fifty-six (56) hour rate. The two (2) hour incentive for the first hour worked is for coverage of the station for the purpose of maintaining minimum staffing during a fire or emergency response. This incentive does not apply to cover for absences that are created by a firefighter who is off for education leave, sick leave, vacation, personal time or compensatory time. Each employee may have choice of overtime pay at their overtime rate or convert hours to Compensatory time at 1.5 hours for each hour of overtime worked.

**Section 26.2.** All opportunities shall be distributed and rotated equally among Employees. The Employer agrees to maintain a log to show the time of the call and the response from each Employee as to whether it was accepted, refused, no answer, sick, vacation, or on duty.

**Section 26.3.** An Employee may be on green (eligible) to answer call back overtime (to fulfill minimum manning requirements) if an Employee is within the following boundaries: an employee must be within a five-mile radius of the city limits or within the boundaries of the New Philadelphia School District.

**Section 26.4.** All Employees may be eligible to receive call in Signal 10.

## **ARTICLE 27** **LONGEVITY PAY**

**Section 27.1.** The Employer agrees to the following longevity pay which shall be paid to each eligible Employee in two (2) semi-annual installments, the first with the first pay in June and the

second with the first pay in December. Any Employee who has five (5) years and one (1) day of employment shall be eligible for longevity pay.

5 years and 1 day to 10 years	\$15.00 per month
10 years and 1 day to 15 years	\$20.00 per month
15 years and 1 day to 20 years	\$30.00 per month
20 years and 1 day to 25 years	\$40.00 per month
25 years and 1 day and above	\$50.00 per month

**ARTICLE 28**  
**WORKING OUT OF CLASSIFICATION**

**Section 28.1.** If the Chief of the Fire Department is absent, on paid or administrative leave from his regular duties, a Captain shall assume command as the acting Chief. The Captain assigned as acting Chief shall receive the Chief's rate of pay for the entire period.

**Section 28.2.** In the event the Chief is absent from his duties for Forty (40) hours or longer, the Senior Captain - Acting Chief shall work the Forty (40) hour Chief's Schedule for that absence. If the Captain/Acting-Chief is required to work any overtime concerning Chief related duties during the Chief's absence, he shall be paid at the Captain's overtime rate. If the senior Captain is absent or refuses the assignment, the Captain with the next highest seniority will be requested to work.

**Section 28.3.** In the event the Chief and the shift Captain are both absent from their regular duties on any paid or administrative leave, the senior Captain will be requested to work the remaining hours that the Chief is normally on duty. If the senior Captain is absent or refuses the shift, the Captain with the next highest seniority will be requested to work. The off-duty Captain functioning as the Chief will be paid at his/her normal overtime rate and in-charge pay for that time.

**Section 28.4.** If in the event the Senior Captain is also absent, the stipulation set forth in Section 2 will apply to next highest Captain in seniority.

**Section 28.5.** If for any reason the Captain or Captain/Fire Inspector on duty is absent, the Lieutenant or Lieutenant/Fire Inspector on duty will receive Captains or Captain/Inspector pay and the regular Firefighter or Firefighter/Fire Inspector on duty with the highest seniority shall receive Lieutenant's or Lieutenant/Fire Inspector pay for the entire absence.

For example:                Lieutenant will receive Captains pay  
                                      Lieutenant/ Fire Inspector will receive Captain/ Fire Inspector pay

**Section 28.6.** In determining the seniority for this pay, the selection will be limited to those Firefighters who are regularly scheduled to work that day. No one who is working due to overtime, call-back status or shift trading will be eligible to receive the extra pay, however, this will not exclude the regularly scheduled Firefighter with the highest seniority from receiving the pay.

**ARTICLE 29**  
**UNIFORM ALLOWANCE/UNIFORMS**

**Section 29.1.** Any member of the Fire Department who has received his permanent appointment shall receive a Uniform Allowance of \$1,000 on February 1<sup>st</sup> annually.

**Section 29.2.** Any member who is serving as a probationary Firefighter shall receive a Uniform Allowance equivalent to the permanent Firefighter's. However, if for any reason the probationary Firefighter is terminated or terminates his employment with the City before serving his one (1) year probationary period he will have fifty (50%) percent of his clothing Allowance deducted from his last pay check.

**Section 29.3.** In the event a probationary Firefighter receives his permanent appointment, he shall be given the regular allowance pro-rated for the number of whole months remaining in the year.

**Section 29.4.** If a Firefighter should terminate or retire from employment with the Employer, the Employer shall deduct from such employee's final paycheck a sum equal to:  
Uniform Allowance x full months remaining in the year / 12

**Section 29.5.** The Employer agrees that there will be no change to the uniform policy, without the written approval of the Union.

**ARTICLE 30**  
**MILEAGE ALLOWANCE**

Employees required to use their private vehicles for Fire Department business, training, schooling, etc. shall be compensated at the Federal IRS mileage rate per mile for that year.

**ARTICLE 31**  
**PERSONAL DAYS**

**Section 31.1.** The Employer agrees to grant each Employee, upon his Employment date, twenty four (24) hours of personal time each year.

**Section 31.2.** This personal time shall accumulate and may only be used according to Fire Department conditions and guidelines effective on December 31, 2012.

**Section 31.3.** This twenty four (24) hours of personal time will be awarded for the period from January 1 through December 31. Any unused personal time will be paid at the Firefighter's base rate on the last pay in December.

**Section 31.4.** Any Employee who receives his permanent appointment during a calendar year, shall receive the personal time on a pro-rated basis of two (2) hours per month from the date of his appointment to December 31. In the case of partial months, one (1) hour shall be granted for that month. Any unused personal time will be paid at the Firefighter's base rate of pay on the last pay in December.

**ARTICLE 32**  
**COMPENSATION AT RESIGNATION, DISMISSAL, RETIREMENT, OR LAYOFF**

Any Employee who resigns, retires, is dismissed or laid off, is eligible for and shall be compensated accordingly for all his accumulated compensatory, holiday time, vacation time, and personal time, including pro-rated pay due for the current year at his current base fifty-six (56) hour rate of pay unpaid.

**ARTICLE 33**  
**PARKING**

The Employer shall provide adequate parking spaces without cost to the employees.

**ARTICLE 34**  
**VACATION**

**Section 34.1.** Vacation shall be earned by each member of the Fire Department based on the following criteria.

**Section 34.2.** Each Employee shall be eligible for vacation with pay after one (1) year of service with the Employer.

**Section 34.3.** Vacation allowance schedule: shall be earned /accrued based on the following schedule:

Less than five (5) years	(6 Shifts)	(144 hours)
Less than ten (10) years	(9 Shifts)	(216 hours)
Less than fifteen (15) years	(12 Shifts)	(288 hours)
More than fifteen (15) years	(15 Shifts)	(360 hours)

**Section 34.4.** Any Employee who is separated from service (resignation, death, retirement, or discharged) shall be compensated in cash for all unused and accrued vacation leave accumulated at his regular rate of pay at the time of separation. If the Employee is deceased, the next of kin will be paid the amount due.

**Section 34.5.** No Employee shall be required to report to work before the end of his approved vacation unless a situation arises where the entire Department is called back for a local emergency or disaster where manpower is in critical need. Any Employee who is called back under these circumstances will be entitled to overtime pay for the time spent on duty.

**Section 34.6.** Any Employee who is recalled under the provisions of section six (6) of this article shall have his vacation reimbursed to him on an hour for hour basis. This vacation can be rescheduled according to standard Fire Department policy at any time within a year's time.

**Section 34.7.** An Employee's annual vacation leave is from their anniversary date to the next anniversary date. Employees who do not utilize their vacation leave shall have the option of

receiving the balance of their unused vacation leave paid to them or carry forward unused vacation leave to the next year up to one thousand eighty (1080) hours. Employees with more than one thousand eighty (1080) hours shall not be permitted to accumulate any additional vacation hours beyond what they currently have banked. Unused vacation leave is calculated by the annual salary divided by two-thousand-nine-hundred-twelve (2912) hours for compensation. An Employee must request compensation in lieu of vacation, in writing, in the month in which the Employee's anniversary date falls and failure to do so shall result in the leave being carried over to the next year or, in forfeiture of leave without pay if the employee has exceeded his maximum accrual amount. Compensation will be paid on the next regularly scheduled pay date after the request is submitted.

**Section 34.8.** Employees have the option of using vacation days on an hour for hour basis. These hours will follow the same vacation usage policies as per Fire Department policy.

## **ARTICLE 35** **HOLIDAYS**

**Section 35.1.** The following holidays are those which shall be recognized and observed:

New Years Day, Martin Luther King Day, Presidents' Day, Easter Sunday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day, Birthday of the Employee as a floating holiday.

An employee wanting to use the Floating Holiday shall submit a written request to the Employer for approval at least four (4) calendar days in advance of the date of its intended use.

**Section 35.2.** All Employees in active pay status shall be paid 11.2 hours of "holiday pay" at their regular rate of pay for each of the days listed in Section 1 of this Article. They shall receive each of these in the pay period in which they fall. For purposes of this Section "active pay status" shall be defined as all time in which the employee is receiving pay from the City at the time the Holiday occurs excluding any periods of unpaid leave, disciplinary suspensions, or periods in which the employee is receiving Temporary Total Disability Benefits from the Ohio Bureau of Worker's Compensation.

**Section 35.3.** Any Employee that works his regularly scheduled shift on the date of the holiday shall receive 5.6 hours at their regular rate of pay in addition to their regular pay and the holiday pay.

## **ARTICLE 36** **SICK LEAVE**

**Section 36.1.** Any Employee incurring a non-duty sickness, contagious illness, injury or disability to himself or to a member of his immediate family for which his care is required shall receive sick leave with full pay for all such leave approved by the City. For purposes of this Article "immediate family shall be defined as: wife, husband, child, step-child or other person to whom the employee stands in loco parentis. Sick leave may also be used for an employee's mother or father if the employee's presence is required to care for the parent. The Fire Chief shall have sole discretion to grant sick leave for an employee whose presence is required to care

for a family member not listed above; the decision of the Fire Chief shall not be subject to appeal in any manner.

**Section 36.2.** Employees shall earn 6.44 hours of sick leave for each 112 hours of completed service. For purposes of this article “hours of completed service” shall include all hours an employee actually worked and all hours of paid leave provided by the City in this Agreement.

**Section 36.3.** Employees shall accumulate sick leave without limitations.

**Section 36.4.** Any Employee wishing to use sick leave must report to his immediate superior. In the event an Employee wishes to report off at the beginning of a turn on duty, the Employee must report off to their immediate superior prior to 0800 of their schedule turn of duty.

**Section 36.5.** Any employee absent for more than two (2) consecutive workdays shall, if requested, provide the City with a physician’s certificate to justify the absence.

**Section 36.6.** In any event of sick leave use the City may require the employee to be examined by the City Nurse or a physician of the City’s choosing at the City’s expense.

**Section 36.7.** Any Employee, after completing a probationary period of one (1) year shall be eligible for sick leave cash out when they are permanently separated from the Fire Department due to disability, retirement, or death consistent with Section 36.9 below.

**Section 36.8.** Any employee, after completing fifteen (15) or more years of service with the City shall be eligible for sick leave cash out when they are permanently separated from the Fire Department consistent with Section 36.9 below.

**Section 36.9.** Sick leave cash out shall be computed at the rate of 75% of accumulated sick leave, up to nine hundred sixty (960) hours.

Example: 960 Accumulated hours X 75% = 720 hours

**Section 36.10.** For the computation of severance pay, the pay shall equal the annual salary divided by two thousand eighty (2080) hours.

## **ARTICLE 37**

### **COMPASSIONATE LEAVE**

**Section 37.1.** An Employee shall be granted one (1) shift compassionate leave in the event of a death of a member of the immediate family. If the family member’s funeral is more than 150 miles from the City of New Philadelphia the employee shall be granted sixteen (16) additional hours of compassionate leave.

**Section 37.2.** In unusual circumstances which result in hardship on the Employee regarding family responsibility, emotional circumstances which may affect the personal health of the Employee, or such other situation, the Fire Chief may grant additional time off.

**Section 37.3.** Any additional time off granted by the Fire Chief shall be deducted from the Employee's sick leave.

**Section 37.4.** Immediate family shall be defined as wife, husband, mother, father, foster-mother, foster-father, step-mother, step-father, sister, brother, child, step child, grandchildren, sister-in-law, brother-in-law, step-sister, step-brother, mother-in-law, father-in-law, uncle, aunt, niece, nephew, grandparents, or spouse's grandparents.

**Section 37.5.** Time off with pay will be granted to any Employee for a death involving any member of the Employee's family not set forth in section 4 of this article, however, such time off shall be deducted from the Employee's sick leave.

### **ARTICLE 38 COURT LEAVE**

**Section 38.1.** When an Employee is required to appear in court in connection with official City business, he shall be granted time off with pay from his regularly scheduled duties.

**Section 38.2.** If a court appearance is required when the Employee is not on duty, the Employee shall be compensated at 2.1 times his base fifty-six (56) hour rate of pay.

**Section 38.3.** When an Employee is on duty, any required personal court appearances will not be considered as paid time off.

**Section 38.4.** If any situation arises under Section 3 of this Article, the Fire Chief may grant the Employee time off; however, this time shall be charged against the Employee's vacation leave, sick leave, or as non-paid personal leave. The choice of what this is charged against shall be at the discretion of the Employee as long as he has ample time available to cover the elapsed time.

**Section 38.5.** Any witness fees collected by the Employee, while engaged in official City business only, shall be returned to the City Auditor upon receipt of such compensation.

### **ARTICLE 39 MILITARY LEAVE**

The Parties agree that military leave and pay shall be administered in accordance with applicable law.

### **ARTICLE 40 JURY DUTY**

**Section 40.1.** Any Employee required to be available for jury selection or service shall receive his regular daily wage for all hours the employee must be absent for jury selection or service. The employee is required to be absent for only the time necessary to complete jury selection or service and must work any hours of his shift not actually spent in jury selection or service.

**Section 40.2.** Any court paid compensation to the Employee for the time spent during his regularly scheduled shift will be surrendered to the City of New Philadelphia in exchange for the employee continuing to receive his regular wage from the City.

**ARTICLE 41**  
**FMLA LEAVE**

It is intended that this section comply with the Family Medical Leave Act of 1993, and the Employer may promulgate policies in furtherance of the Family Medical Leave Act that are not inconsistent with the law.

Special leave with pay, to a maximum of one (1) shift, will be granted to the Employee at the time of the birth of his child or to any Employees for need directly related to the adoption of a child. Said leave shall not be subtracted from any leave the employee may have accrued but shall be conditioned on the absence being an FMLA-covered absence and the employee providing all required documentation to the Employer.

**ARTICLE 42**  
**EDUCATIONAL LEAVE**

**Section 42.1.** Employees when approved, shall be granted leave with pay for educational purposes to attend any conferences, seminars, training sessions, or other functions of a similar nature, that are to improve, maintain, or upgrade the Employee's certifications, skills, and professional ability. Educational leave will be granted even if it creates overtime.

**Section 42.2.** Employees who attend any conference, seminar, training session, etc., on their day off shall be granted their choice of overtime or compensatory time at 1.5 hours for each hour of attendance.

**Section 42.3.** The Employer will pay for tuition, books, meals, mileage, lodging etc. for any conference, seminars, training sessions, or other function of a similar nature involving Fire or EMS related topics which are approved by the Fire Chief.

**ARTICLE 43**  
**HEALTH BENEFITS**

**Section 43.1.** The City agrees to provide all Bargaining Unit Employees with health and medical insurance under the two (2) plan options as follows. The Employer shall have the option to contract with any qualified health care insurance provider for health insurance coverage.

OPTION 1 - Option 1 is an 80/20 plan with a \$10/\$20/\$30/\$40 co-pay prescription plan with a two (2) co-pay for three (3) fill mail order provision. A summary list of coverage's under Option 1 shall be available to all employees upon request.

OPTION 2 - Option 2 is an Employee Health Savings Account (HSA). A summary list of coverage's under Option 2 shall be available to all employees upon request.

Employees shall advise the Employer of their OPTION 1, or OPTION 2 selection by submitting the furnished health and medical provider forms during the annual enrollment period.

The parties agree that the Employer may, in its sole discretion, create a third insurance plan option of its own design, referred to as the "City Plan." If the City plan is created it shall be offered to employees during normal open enrollment periods. The Employer will require no premium contribution from the employee choosing the City Plan. The Employer shall have sole discretion to alter any provision of the plan from year-to-year and employees shall be permitted to opt into or out of the City Plan during normal open enrollment periods. The City shall not be required to offer a third plan or to continue a third plan if in fact it is offered.

**Section 43.2.** Employees of the Bargaining Unit shall contribute to the maintenance of hospitalization and major medical policies as follows:

The employee shall contribute fifteen percent (15%) of the cost of the premium for Plan 1. The City shall pay the remaining eighty-five percent (85%) of the Plan 1 premium. The employee shall contribute five percent (5%) of the cost of the premium for Plan 2. The City shall pay the remaining ninety-five percent (95%) of the Plan 2 premium. The Employer will establish a deduction plan so that the amounts are deducted evenly over twenty-four (24) pay periods.

**Section 43.3.** The Employer will deposit one-half (1/2) of the respective Health Savings Account deductible chosen by the employee (single or family) into the employee's Health Savings Account annually. Said funding may be paid quarterly or semi-annually at the discretion of the employer. Nothing in this section shall preclude the employer from increasing the annual HSA contributions.

**Section 43.4.** For any employee who is employed as of the execution of this Agreement and is not enrolled in Plan 2 (HSA) but does elect to enroll in Plan 2 during the effective period of this Agreement during normal enrollment periods, the Employer shall immediately advance to that employee's HSA account the full deductible of the respective Plan chosen (Single or Family). The employee shall receive no further contributions to their HSA account by the Employer for that Plan year however, if the employee remains enrolled in Plan 2 for subsequent years(s) the Employer's annual contribution to the employee's HSA account shall be as stated in Section 43.3 above. This increased HSA account contribution expires at the end of this Agreement and no employee shall be eligible to receive this increased contribution more than one (1) time during the term of this Agreement. Any employee receiving this one-time increased HSA contribution who leaves the employment of the City before the expiration of the Plan year shall have a pro-rata amount of the increased contribution withheld from the employee's final paycheck and/or separation benefits. Employees hired after the execution of this Agreement (new hires) shall not be eligible for this increased contribution if they elect Plan 2 and Employer Health Savings Account (HSA) contributions for new hires shall be pro-rated monthly from the date of eligibility.

**Section 43.5.** The City agrees to maintain the current VSP eye care program at no additional cost to the Employees.

**Section 43.6.** The City agrees to participate in an IRS Section 125 program that will allow contributions by the Employees toward health insurance to be made pre-taxed.

**Section 43.7.** The City and the Union agree to establish a committee in a cooperative effort to research other policies or carriers, to reduce costs, and/or enhance benefits from current coverage. The committee will also research and make recommendations on other cost containments such as levels of coverage or opting out of coverage in lieu of other financial considerations.

#### **ARTICLE 44** **LIFE INSURANCE**

The Employer shall provide a \$30,000 (Double Indemnity Accident) life insurance protection for each Employee. The Employer shall pay 100% of the premium.

#### **ARTICLE 45** **MALPRACTICE INSURANCE AND REPRESENTATION BY COUNSEL**

**Section 45.1.** The Employer shall provide Employees with malpractice insurance with limits of not less than \$1,000,000.00 per claim.

**Section 45.2.** If a Union member is sued in any court action, except criminal, traffic, and misdemeanor offenses, allegedly arising from said member's actions or conduct as an Employee of the City of New Philadelphia, the City shall select and pay for an attorney who shall provide defense for said member. When the alleged action is one for which insurance is provided, the Employee shall be represented by counsel selected by the insurer.

#### **ARTICLE 46** **SAFETY AND HEALTH**

The Employer agrees to provide the highest standards of safety and health in the Fire Department in order to eliminate as much as possible accidents, deaths, injuries, and illnesses in the Fire service. It is not the intention of the Parties that these provisions, the Union's exercise of its rights hereunder or its failure to do so shall in any way diminish the Employer's exclusive responsibility as described in this Article.

**Section 46.1.** Joint Safety and Health Committee.

- A. There shall be a six (6) member Joint Safety and Health Committee composed of an equal number of Employer and Union representatives. The Union representatives shall be selected by the Union. The joint committee shall:
1. Meet at least once each calendar quarter.
  2. Make periodic inspections of Fire Department facilities, apparatus, protective equipment, protective clothing and devices.

3. Review work methods and conditions, including training procedures at least once every three (3) months.
  4. Make written recommendations for the corrections of hazardous conditions or unsafe work methods which comes to its attention. All recommendations shall be forwarded to the Fire Department Officials responsible for providing a safe and healthy work place and include a target date for the abatement of the hazardous conditions or unsafe work practice.
  5. Review and analyze all reports of accidents" deaths, injuries and illnesses. Make immediate and detailed investigation of each accident, death or injury to determine fundamental cause. Make written recommendations that include a date of implementation to modify or add rules and procedures to further promote the avoidance of such incidents in the future.
  6. Review and make written recommendations during the development of a systematic medical testing program for potential work related illnesses or disabilities by the Fire Department. Review and make written recommendations of the systematic testing program six (6) months after the establishment of such program and every twelve (12) months thereafter. In carrying out this review of the Fire Department's Medical testing program the confidentiality of any individual's medical records shall not be violated by the committee.
- B. Copies of all records and reports, including all reports required by any governmental agency, under any applicable federal, or state safety and health law, shall be made available upon request to each member of the Safety and Health Committee.
- C. The committee may ask the advice, opinion, and suggestions of experts and authorities on safety matters. The committee's Union representatives at their own request shall have the right to call on such experts and authorities, including representatives from the International Union, to make any examinations, investigations, and recommendations as shall be reasonably connected with the purpose of the committee.
- D. The Employer shall pay the Union members of the committee at their regular rate for all time spent on committee business, while on duty, including time spent in inspections, handling of safety problems, accompanying inspectors, and in meetings or training seminars related to safety and health.
- E. The committee shall be considered an adjunct of, and subordinate to, the regular grievance procedure. All disputes and disagreements arising under the Safety and Health clause of this Agreement shall be referred to the safety and health committee, but if not disposed of by the safety and health committee within fifteen (15) days, shall be subject to the grievance procedure and shall be introduced at a level immediately preceding arbitration.

**Section 46.2.**

- A. The Employer shall furnish and thereafter maintain at no cost to the Employee all respiratory apparatus, gloves, helmet, protective clothing, and other protective equipment, such as: personal alarm devices, necessary to preserve and protect the safety and health of Firefighters.
- B. All protective clothing and equipment shall meet the standard, whether existing or promulgated during the term of this Agreement, that provides the highest level of worker protection from among federal, state, or voluntary consensus standards.
- C. Only personnel who have been trained and certified by the manufacturer or applicable federal agency shall be permitted to perform maintenance and/or repairs on self-contained breathing apparatus.

**Section 46.3.**

- A. The Employer agrees to co-operate in the development and implementation of a program of systematic medical testing for potential work-related illnesses or disabilities that may arise because of the nature of the work process and the exposure of the Employees to dangerous substances. The program shall be carried out without cost to the Employee, The Fire Chief, and the Mayor of the City who shall keep them in strict confidence. At no time will these medical records be made public without written consent of the Employee.
- B. The contents of this medical surveillance will be decided by the joint safety and health committee and the mutual acceptance by the Union and the Employer.

**Section 46.4. Right to Refuse Work.** The wording of the section delayed and will become permanent part of this Agreement attached as an appendix and labeled "Safety and Health - Section 4 -Right to Refuse Work"

**Section 46.5. Non-Liability for Safety and Heath.** The Employer shall indemnify and hold harmless the Union and it's, International, Committees, officers, agents, representatives and Employees, from any and all claims and suits from damages for personal injuries, including death, arising from or growing out of any alleged occupational safety and health hazards including any claims against the Union and its International, committees, officers, agents, representative, or Employees for alleged actions or failure to act.

**ARTICLE 47**  
**MINIMUM MANNING**

**Section 47.1.** Sufficient personnel shall be maintained on duty and available for response to alarms. Sufficient Firefighters/EMT personnel shall be available to provide a minimum of four (4) Firefighter/EMT personnel in the station at all times to protect the health, safety and welfare

of the citizens of New Philadelphia and Goshen Township. Daily staffing will be five (5) Firefighter/EMT personnel.

**Section 47.2.** For purposes of minimum manning, the Fire Chief or Acting Chief shall not be considered.

**Section 47.3.** The minimum initial response to any ambulance call shall be three (3) Firefighters/EMT's, any engine call shall be four (4) Firefighter/EMT's, any rescue call shall be four (4) Firefighter/EMT's, and any ladder/truck company call shall be four (4) Firefighter/EMT's.

**Section 47.4.** At no time shall any vehicle be dispatched on a call with less than two (2) Firefighter/EMT personnel. An exception to this would be when one (1) additional man is needed at a scene where two (2) or more Firefighter/EMT personnel are already stationed.

**Section 47.5.** An understaffed vehicle must be filled by off-duty personal without restrictions or hesitations while responding to a call.

#### **ARTICLE 48** **SANITATION AND UPKEEP**

**Section 48.1.** The Employer agrees to supply and make available all materials required in the day-to-day cleaning and housekeeping of the Fire Station. The Employer furthermore agrees to supply all items necessary to maintain satisfactory sanitary conditions of all living quarters within the Fire Station.

**Section 48.2.** Cleaning and housekeeping of the living quarters will be the responsibility of the Employees and will be part of their regularly scheduled duties.

#### **ARTICLE 49** **SUCCESSORS**

This Agreement shall be binding upon the successors and assigns of the Parties hereto, and no provisions, terms or obligations herein contained, shall be affected, modified, altered or changed in any respect whatsoever by the consolidation, merger, annexation, transfer or assignment of either party hereto, or by any change geographically or otherwise in the location or place of business of either party.

#### **ARTICLE 50** **SAVINGS CLAUSE**

If any provisions of this Agreement, or the application of such provisions, should be rendered or declared invalid by any court action or by any existing or subsequently enacted legislation, the remaining parts or portions of this Agreement shall remain in full force and effect. The Parties will meet as soon as possible to re-negotiate any invalidated provisions.

**ARTICLE 51**  
**GENDER**

Whenever a male gender is used in this Agreement it shall be construed to include male and female Employees unless biologically infeasible.

**ARTICLE 52**  
**APPENDICES AND AMENDMENTS**

All appendices and amendments of this Agreement shall be numbered (or lettered), dated and signed by the responsible Parties and shall be subject to all the provisions of this Agreement.

**ARTICLE 53**  
**BONUS IN LIEU OF DENTAL INSURANCE**

The City agrees to pay each Firefighter a 1 % salary increase calculated on the current Bargaining Unit average base salary. This amount is \$ 289.14 rolled into each Bargaining Unit member's base salary.

This is a one-time increase on each Bargaining Unit member's salary and shall become effective on March 1, 1997. This salary increase is a payment in lieu of providing each Firefighter with dental insurance. Any further negotiations involving the provision of dental insurance may, at the discretion of the City, involve this 1% (or \$289.14) payment.

**ARTICLE 54**  
**TUITION REIMBURSEMENT**

**Section 54.1.** An employee shall have the opportunity to attend an accredited institution to obtain his or her Fire Science Degree and/or Emergency Medical Degree. All courses must be approved by the Safety Director and will be subject to availability of funds.

**Section 54.2.** The employee shall be reimbursed for tuition, books and any other material that is needed for the courses stated above. The tuition reimbursement under this Article 54 shall be for up to four (4) academic courses per calendar year. Payment shall be equal to the tuition, books and study material cost of Stark State or Kent State Tuscarawas or any other accredited educational institution approved by the Safety Director.

**Section 54.3.** To be eligible for tuition reimbursement an employee will be required to successfully complete the course.

Except in the case of retirement, layoff, or disability the employee will be required to reimburse employer for all course related costs if the employee otherwise separates from service within three (3) years after the course completion date.

**ARTICLE 55**  
**SUBSTANCE ABUSE POLICY**

1. Drug Free Workplace Policy:

- a. Generally: The City of New Philadelphia is concerned with the effects drug abuse can have on an employee, his family, and the employee's ability to perform his work safely and efficiently. The City believes it is important as a public entity and leader in the community in the war against drugs and alcohol abuse that a policy be established that prohibits the manufacture, distribution, dispersal, possession, or use of controlled substances in the workplace. The following policy is intended to meet the above objectives and comply with the provisions of the Drug Free Workplace Act of 1988.
- b. Acknowledgment and Notice:
  - (1) As a condition precedent to hiring, all prospective employees will receive a copy of the City's Drug Free Workplace statement and policy and will be required to sign an Acknowledgment of Receipt which will become a permanent part of the employee's personnel file.
  - (2) All prospective employees will be required to acknowledge that they are aware of the City's Drug Free Workplace policy and understand that it is a condition of employment.

2. Definitions: For purposes of this policy:

Employee: means any person (i.e., management, supervisory, or non-supervisory), who is paid in whole or in part by the City.

Controlled Substance: means any drugs, compounds, mixtures, preparation, or controlled substance contained in the panel urine drug screen of the Occupational Medicine Center of Tuscarawas County if available, if not, any other comparable facility.

Conviction: means any finding of guilt by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.

Criminal Drug Statute: means a criminal statute involving the manufacture, distribution, dispensation, use, or possession of any controlled substance. For purposes of this policy all definitions will be consonant with O.R.C. Section 3719.01 et seq. and O.R.C. Section 2925.01 et seq.

SAMSHA: means and refers to Substance Abuse and Mental Health Services Administration, an agency of the U.S. Department of Health and Human Services.

3. Distribution of Information: Each employee shall receive an information package containing:
  - a. A current copy of the Employer's posted/published Drug Free Workplace policy employees will be required to sign "Acknowledgment of Employer' Information Regarding the Drug Free Workplace Act Policy."
  - b. Information concerning the penalties that will be imposed for a breach of the Employer's Drug Free Workplace policy.
  - c. Notice to the employee that any work related conviction of any federal or state criminal drug statute shall be reported in writing by the employee to the Employer within five (5) calendar days after such conviction.
4. Prohibited Activity: The unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance by any employee which takes place in whole or in part in the Employer's workplace is strictly prohibited and will result in criminal prosecution and disciplinary action procedures as indicated in Section 6 Paragraph (a), up to and including termination from employment.
5. Notification of Conviction: Any employee convicted of any federal, state, or municipal criminal drug statute for a workplace related drug offense must notify the Safety Director of such within five (5) calendar days of the conviction.
6. Employer Action: The Safety Director will, within thirty (30) days after receiving notice of a conviction from an employee, or upon concluding that an employee has violated paragraph (4) above:
  - a. For a first offense the employer may require the employee to satisfactorily participate in a drug rehabilitation program as provided herein. If the employee rejects participation in the drug rehabilitation program then appropriate disciplinary action shall be taken against such employee up to and including termination.
  - b. On a second or subsequent offense the employer may take appropriate disciplinary action against such employee up to and including termination.
7. Failure to Report: Any employee who fails to report an arrest and/or conviction in violation of this policy may be subject to discipline up to and including termination from employment.
8. Alcohol and Drug Rehabilitation Policy:

- a. Any employee who is referred to a drug or alcohol rehabilitation program and fails to satisfactorily participate in the program will be terminated from employment.
- b. Prior to appointment after a conditional offer of employment, the Employer may require candidates for safety-sensitive positions to pass a physical examination which may include blood, urine, or similar testing to determine whether an applicant has used a controlled substance.
- c. The City recognizes alcoholism and drug addiction may be treatable, and encourages employees who may have an alcohol or drug problem to seek professional treatment or assistance on their own initiative.
- d. For purposes of this policy, an alcohol or drug abuse problem exists when an employee's alcohol consumption or drug abuse interferes with the employee's job performance, presents a threat to the safety of persons or property. This policy is intended to assure employees with an alcohol/drug abuse problem will not have their job security or promotional opportunities jeopardized by a request for treatment. Employees should understand this means that a request for treatment will not automatically exonerate them from discipline when the Employer initiates disciplinary action for manufacturing, distributing, dispensing, possessing, or using drugs in the workplace, or violations of the Employer's policies due to alcohol abuse. Employees who may be drug dependent are encouraged to voluntarily seek professional assistance through a treatment program supervised by the Employee Assistance Program. Any self-referral will be kept confidential to the extent provided by the EAP's policies and procedures. Voluntary assistance should be sought BEFORE the drug abuse affects job performance or endangers fellow Employees or members of the public.
- e. An individual's rights to confidentiality and privacy are recognized. Any pertinent information and records of employees with alcohol or drug problems will be treated in the same manner as all other medical records, subject to provisions of applicable law, City policy, and City ordinance.
- f. It is the responsibility of the employee to comply with any referral for diagnosis and to cooperate with the prescribed treatment. An employee's refusal to accept diagnosis or treatment, or failure to respond to treatment, will be handled in the same manner as all other illnesses when job performance continues to be adversely affected. Refusal may be considered insubordination for disciplinary purposes.
- g. Implementation of this policy will not require or result in any special regulations, privileges, or exemptions from the standard administrative practices applicable to job performance.

9. In the case where the Employer has reasonable suspicion to believe that the employee has violated the alcohol or controlled substances prohibitions stated in this policy, the following procedure will be followed:
10. A trained supervisor shall be required to document the employee's conduct as defined by the section "Reasonable Suspicion Testing" located in Section H of this manual. If possible, witnesses should also complete a signed statement documenting the employee's conduct. The written record detailing the observations leading to a reasonable suspicion test shall be completed as soon as possible.
12. Reasonable suspicion tests must be performed within eight (8) hours of the observation.
13. Any employee who has been ordered to undergo a drug and alcohol test shall be accompanied to the testing site by his supervisor or designee.
14. A refusal to comply with the drug and alcohol testing will constitute insubordination and a presumption of impairment, and may result in disciplinary action up to and including termination.
15. The Fire Chief or designee shall inform the employee that he/she is immediately relieved of duty with pay, pending the results of the drug and alcohol test. The supervisor shall accompany the employee home or ensure that a family member or friend accompanies the employee home.
16. The Fire Chief or designee is required to notify the employee if the controlled substance test results were positive and which substances actually tested positive.
17. Disciplinary action against an Employee for substance abuse shall occur only after a departmental investigation in which the Employee is informed of the evidence against him and has had an opportunity to respond. Employees shall be advised of their right to Union representation.
18. Employees who as a result of being drug tested are found to be using illegal drugs may be subject to dismissal. Voluntary submission to a program may be considered prior to imposition of a disciplinary penalty. Employees who are found to be abusing drug(s) which have been legally prescribed shall be allowed to enter a substance abuse rehabilitation program and shall not be terminated on the first instance of illegal drug use. Refusal to submit to a drug test, or adulteration of, or switching a urine sample may also be grounds for dismissal.
19. Employees may appeal any formal disciplinary action subject to the Grievance Procedure contained in this Agreement up to and including arbitration.
20. If the confirmation screen results are positive, Employees may request an additional screening, beyond the confirmation screening, by an SAMHSA

approved alternate laboratory. Employees will be responsible for the cost of any additional screenings. For chain of custody purposes, the sample will be transferred directly from the Medical Provider to the alternate laboratory, and the alternative laboratory will complete the Chain of Custody form. If the confirmation screen results are positive, the Medical Provider will retain the sample for at least one (1) year to allow for additional screenings, and Employee appeals.

- A. The City of New Philadelphia's employees are our most valuable resource and it is our goal to provide a healthy, satisfying working environment that promotes personal opportunities for growth. In meeting these goals, it is our policy to (1) assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner; (2) create a workplace environment free from the adverse effects of drug and alcohol abuse or misuse; (3) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and (4) to encourage employees to seek professional assistance any time personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.
  
- B. The purpose of this policy is to assure an employee's fitness for duty and to protect our employees, passengers, and the public from the risk posed by the use of alcohol and prohibited drugs. This policy is also intended to comply with all applicable Federal Regulations governing workplace anti-drug programs in the highway industry. The Federal Highway Administration (FHWA) of the U.S. Department of Transportation has enacted 49 CFR Part 382 that mandates urine drug testing and breath alcohol testing for safety-sensitive positions and prevents performance of safety-sensitive functions when there is a positive test result. The U.S. Department of Transportation (DOT) has also enacted 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens. In addition the DOT has enacted 49 CFR Part 29.

**\*NOTE** The following provisions set forth in bold face print are consistent with requirements specifically set forth in 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Program and 49 CFR Part 382 Random Drug Test Program. All other provisions are set forth under the City's authority and will comply with NIDA look-a-like test.

- C. Applicability: This policy applies to all New Philadelphia's employees, part-time employees, volunteers, and contractors when they are on the City's property or when performing any City-related business. This policy applies to off-site lunch periods or breaks when an employee is scheduled to return to work. Visitors, vendors and contractor employees are governed by this policy while on City premises and will not be permitted to conduct City business if found to be in violation of this policy.

A safety-sensitive function is any duty related to the safe operation of highway maintenance duties, equipment, including the operation, dispatch and maintenance of a City vehicle and any other employee who holds a Commercial Driver's License or drives a County vehicle.

D. Prohibited Substances: “Prohibited substances” addressed by this policy include the following:

1. Illegally Used Controlled Substances or Drugs. Any illegal drug or any substance identified in the panel urine drug screen of the Occupational Medicine Center of Tuscarawas County if available, if not, any other comparable facility. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs.
2. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medication is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functions, motor skills, or judgment may be adversely affected should be reported to supervisory personnel and medical advice should be sought, as appropriate, before performing work-related duties.

A legally prescribed drug means that an individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. It must include the patient’s name, the name of the substance, quantity/amount to be taken, and the period of authorization. The misuse or abuse of legal drugs while performing City business is prohibited.

3. Alcohol: The use of beverages containing alcohol or any other substance such that alcohol is present in the body while performing City business is prohibited. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breaths measured by an evidential breath testing device.

E. Prohibited Conduct:

1. Intoxication/Under the Influence: Any employee who is reasonably suspected of being intoxicated, impaired, under the influence of a prohibited substance, or not fit for duty shall be suspended from job duties pending an investigation and verification of condition with pay. Employees found to be under the influence of prohibited substances or who fail to pass a drug or alcohol test shall be removed from duty immediately and subject to the appropriate rehabilitation and/or disciplinary procedures as outlined in this Agreement. A drug or alcohol test is considered positive if the individual is found to have a quantifiable presence of a prohibited substance in the body above the minimum threshold defined in 49 CFR Part 40, as amended.
2. Alcohol Use: No employee should report for duty or remain on duty when his/her ability to perform assigned functions is adversely affected by alcohol or when his/her blood concentration is 0.04 or greater. No employee shall use alcohol while on duty, while performing either safety-sensitive or non-safety-sensitive functions, or just before or just after performing a safety sensitive function. No employee shall use alcohol within four (4) hours of reporting for their regularly

scheduled duty day. Individuals who violate these provisions shall be subject to the appropriate discipline.

3. Compliance with Testing Requirements: All employees will be subject to urine drug testing and breath alcohol testing. Any employee who refuses to comply with a request for testing, who provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution shall be removed from duty immediately, and a positive test result shall be conclusively presumed. Said positive test result will subject employee to the appropriate discipline. Refusal can include an inability to provide a specimen within a three (3) hour period or breath sample without a valid explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test. The three (3) hour period begins when the employee reaches the testing site. The employee shall be transported to the testing site by a City mandated representative.
4. Treatment Requirements: All employees are encouraged to make use of the available resources for treatment for alcohol and substance abuse problems. Employees shall be required to undergo treatment for substance abuse. Any employee who refuses or fails to comply with FHWA's requirement for treatment, after care, or return to duty shall be subject to disciplinary action, up to and including termination. The cost of any treatment or rehabilitation services will be paid for by the employee's health care provider and/or the employee. Employees will be allowed to take any accumulated sick, personal, compensatory or vacation time to participate in the rehabilitation program.
5. Proper Application of the Policy: The City is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/administrative personnel are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/administrative personnel who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

F. Testing for Prohibited Substances: Analytical using drug testing and breath testing for alcohol shall be conducted when circumstances warrant as required by federal regulations. All employees shall be subject to testing prior to employment, for reasonable suspicion, following an accident, or upon return to duty from a substance abuse rehabilitation program. The employer must ensure random drug testing of at least fifteen percent (15%) of the employer's total (average annual) safety sensitive work force during the calendar year. In order to accomplish testing of fifteen percent (15%) of the employer's total (average annual) safety sensitive work force, testing shall be done at least quarterly. In addition, all employees will be tested prior to returning to duty after failing a drug test or alcohol test and after completion of the Substance Abuse Professional's recommended treatment program. Those employees who perform safety-sensitive functions as defined in the attachment to this policy shall be subject to follow-up testing in a random, unannounced basis. Whenever an Employee returns to duty after

participation in a substance abuse rehabilitation program regardless of the duration of absence; such an Employee shall be required to undergo a minimum of six (6) urine tests within the one year period starting with the date of return to duty.

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (DHHS)/National Institution on Drug Abuse (NIDA). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended.

The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine. An initial drug screen will be conducted on each specimen. For those specimens that are not negative, a confirmatory gas Chromatography/Mass Spectrometry (GS/MS) test will be performed. The test will be considered positive if the amounts present are above the minimum thresholds established in 49 CFR Part 40, as amended.

Tests for alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA) approved evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT). An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy and a violation of the requirements set forth in 49 CFR Part 382 for safety-sensitive employees.

Any employee that has a confirmed positive drug or alcohol test will be removed from his/her position, informed of educational and rehabilitation programs available, and evaluated by a Substance Abuse Professional (SAP).

The City affirms the need to protect individual dignity, privacy and confidentiality throughout the testing process.

G. Employee Requested Testing: If the confirmation screen results are positive, Employees may request an additional screening, beyond the confirmation screening but such request shall be made within seventy-two (72) hours. The additional screening shall be conducted by an SAMHSA approved alternate laboratory. Employees will be responsible for the cost of any additional screenings. For chain of custody purposes, the sample will be transferred directly from the Medical Provider to the alternate laboratory, and the alternative laboratory will complete the Chain of Custody form. If the confirmation screen results are positive, the Medical Provider will retain the sample for at least one (1) year to allow for additional screenings, and Employee appeals.

H. Cause for Testing:

Reasonable Suspicion Testing: All employees may be subject to a fitness for duty evaluation, to include appropriate urine and/or breath testing when there are reasons to believe that drug or alcohol use is adversely affecting job performance. A reasonable suspicion referral for testing will be made on the basis of documented objective facts and circumstances which are consistent with long or short-term effects of substance abuse or alcohol misuse. Whenever an Employee's behavior creates a reasonable suspicion of

drug use the following is a non-exclusive list of factors which may give rise to reasonable suspicion of substance abuse. Any factor alone, or in combination with other factors, may be sufficient to constitute reasonable suspicion:

1. Direct observation of drug use.
2. Possession of drugs or related paraphernalia.
3. Employee admissions of drug use or possession.
4. Symptoms of drug use including, but not limited to, disturbances in gait, slurred speech, impaired gross or fine motor control.
5. Any tampering with the drug screening process.
6. Any arrest for any drug related criminal offense, or the filing of any drug related criminal charge against the Employee.

The following factors must be used in combination with other factors and cannot by themselves serve to constitute reasonable suspicion:

1. Attendance problems, including absenteeism, tardiness, or unusual use of sick leave.
2. Excessive or repetitive vehicular, equipment, or other workplace accidents.

Reasonable suspicion referrals will be made by a supervisor (two [2] when practical) who is trained to detect the signs and symptoms of drug and alcohol use and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to prohibited substance abuse or alcohol misuse.

Post-Accident Testing: All employees may be subject to a urine and breath testing if they are involved in an accident with a City vehicle. This includes all safety-sensitive employees that are on duty in the vehicles and any other whose performance could have contributed to the accident. A post-accident test will be conducted if an accident results in injuries requiring transportation to a medical treatment facility; or if one (1) or more vehicles incur disabling damage that requires towing from the site; or if the employee receives a citation under state or local law for a moving traffic violation arising from the accident. The City's employee may still be tested if facts and circumstances give cause to believe that they may have contributed to the accident, regardless if citation is issued. The Fire Chief or his designee will determine whether screening is appropriate with due regard to the nature of the accident and medical treatment involved.

Following an accident, the employee will be tested as soon as possible, but not to exceed eight (8) hours for alcohol testing and thirty-two (32) hours for drug testing. Any employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test. Any employee who leaves the scene of the accident without justifiable explanation prior to submission to drug and alcohol testing will be considered to have refused the test and will be subject to the appropriate disciplinary action. Employees tested under this provision will include not only the operations personnel, but also any other covered employees whose performance may have contributed to the accident.

Random Testing: All safety-sensitive employees will be subject to random, unannounced drug and alcohol testing. The Employer must ensure random drug testing of at least fifteen percent (15%) of the Employer's total (average annual) safety sensitive work force during the calendar year. In order to accomplish testing of fifteen percent (15%) of the employer's total (average annual) safety sensitive work force, testing shall be done at least quarterly. City of New Philadelphia Employees will be selected by a 3 digit "pill" draw. The numbers selected shall be matched to the confidential 3 digit ID numbers to determine the selected Employees. Said drawing shall be conducted by the MRO with the Union Observer present. The selected Employees will be screened within five (5) calendar days. Notification of screening will be withheld from the selected Employee until the day of the screening so that the screening is not compromised. Any selected Employee who is on approved leave status during the current screening process will automatically be tested in the next random screening.

Return-to-Duty Testing: All employees who previously tested positive on a drug or alcohol test must test negative and be evaluated and released to duty by a substance abuse professional before returning to work.

Follow-up Testing: Whenever an Employee returns to duty after participation in a substance abuse rehabilitation program regardless of the duration of absence; such an Employee shall be required to undergo a minimum of six (6) urine tests within the one year period starting with the date of return to duty.

- I. Employment Assessment: Any safety-sensitive or non-safety-sensitive employee who tests positive for the presence of illegal drugs or alcohol above the minimum thresholds set forth in 49 CFR Part 40, as amended, shall be evaluated within ten (10) days by a substance abuse professional (SAP). A SAP is a licensed or certified physician, psychologist, social worker, employee assistance professional, or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders and substance abuse. The SAP will evaluate each employee to determine what assistance, if any, the employee needs in resolving problems associated with prohibited substance abuse or misuse.

Assessment by a SAP does not shield an employee from disciplinary action or guarantee employment or reinstatement with the City of New Philadelphia.

If an employee is allowed to return to duty, he/she must properly follow and complete the rehabilitation program prescribed by the SAP, the employee must have negative return-to-duty drug, and alcohol tests, and be subject to unannounced follow-up tests for a period of one (1) years. The cost of any treatment or rehabilitation services will be paid directly by the employee and/or his insurance provider. Employees will be allowed to use any accumulated sick, personal, compensatory or vacation time to participate in the prescribed rehabilitation program.

- J. Re-entry Program: Employees who re-enter the workforce must agree to a re-entry program. That program may include (but is not limited to) the following:

1. A release to work statement from an approved Substance Abuse Professional (SAP).
  2. A negative test for drugs and/or alcohol.
  3. An agreement to unannounced frequent follow-up testing as per FTWA guidelines.
  4. Recognition by the employee of his/her mandatory obligation to follow specified after care requirements.
  5. Recognition that violation of re-entry program constitutes grounds for disciplinary action up to and including termination.
- K. Waiver: Should the regulations concerning mandatory drug and alcohol testing issued by the Federal Highway Administration (FHWA), (49 CFR part 40, part 382) or any parts or portions thereof of a provision of this agreement be found to be invalid or unconstitutional by a court of competent jurisdiction; such a provision shall be subject to re-negotiation by the parties . The Union reserves all legal rights and remedies to challenge any provision of this program which has been included in the contract to comply with the mandatory requirements of the FHWA regulations which have been deemed invalid by a court of competent jurisdiction.

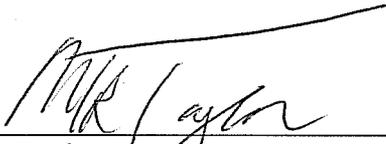
**ARTICLE 56**  
**DURATION AND EFFECTS**

This Agreement shall be effective as of the date of execution and shall remain in full force and effect through December 31, 2015, and thereafter from year-to-year unless at least sixty (60) days prior to said expiration date or any anniversary thereof, either party gives a timely written notice to the other of an intent to modify or amend the provisions of this Agreement.

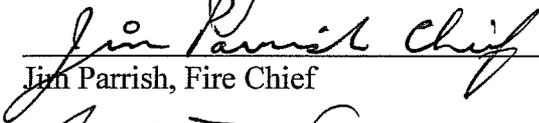
Agreed to by the Parties this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**SIGNATURE PAGE**

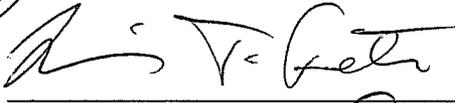
For the City of New Philadelphia



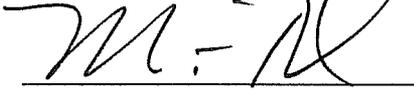
Mike Taylor, Mayor



Jim Parrish, Fire Chief



Marvin T. Fete, Law Director

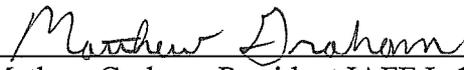


Matthew B. Baker, Labor Consultant

For the International Association of  
Firefighters, Local # 1501



Kendall Bick, IAFF Local-1501 Negotiator



Mathew Graham, President IAFF L-1501



Keith DeVault, V.P. IAFF Local-1501



Steve Wright, IAFF Local-1501 Negotiator

**APPENDIX A**  
**WAIVER OF REPRESENTATION**

I, \_\_\_\_\_ (please print name), hereby acknowledge that I have been advised of my rights as they pertain to impending disciplinary action that may be taken against me, and that I hereby execute this waiver of my own free will absent any coercion by anyone involved.

I unqualifiedly waive my right to representation by the Union and will hold the Union harmless and without responsibility to any resultant action that may or may not result from my decision to secure outside legal counselor in representing myself before my Employer in this action.

**Signature**

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Witnessed by:**